Supreme Court, U.S.
FILED

No. 08-_____

IN THE SUPREME COURT

OF THE UNITED STATES

BRAHIM (ABE) AYAD AND MICHAEL TROY (MIKE) WATSON Dba, "POLITICALLY DAMNED" TALK RADIO
Petitioners,

v.

RADIO ONE, INC., et al.
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the United States

PETITION FOR A WRIT OF CERTIORARI

BRAHIM (ABE) AYAD, Dba
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QUESTIONS PRESENTED

Summary Judgment

Whether the **Fourteenth** Amendment to the United States Constitution guaranteeing equal protection under the law including the laws and precedent of the State of Ohio require the Cuyahoga County, Ohio Court of Appeals and the Eighth District Court of Appeals of Ohio and the Supreme Court of Ohio to exercise the standard of law as determined in Ohio on the issue of Summary Judgment equally to Plaintiff, Brahim (Abe) Ayad a Palestinian American Muslim and Michael Troy Watson a Black American Student of Islam. The Ohio Supreme Court, Eighth District Court of Appeals and Cuyahoga County Court of Common Pleas must use the same **Standard of Summary Judgment** for all parties and not discriminate against the Petitioners succumbing to the pressure or influence of the Anti-Defamation League and/or the Jewish Legal Community who were intent on persecution of the Plaintiff/Appellant/Petitioners for their religious and political beliefs.

Freedom of Speech

Whether the **Fourteenth** Amendment to the United States Constitution guaranteeing equal protection under the law including the laws and precedent of the State of Ohio require the

Cuyahoga County, Ohio Court of Appeals and the Eighth District Court of Appeals of Ohio and the Supreme Court of Ohio to exercise the standard of law as determined in Ohio on the issue of Summary Judgment equally to Plaintiff, Brahim (Abe) Ayad a Palestinian American Muslim and Michael Troy Watson a Black American Student of Islam. The Ohio Supreme Court, Eighth District Court of Appeals and Cuyahoga County Court of Common Pleas must use the same **Standard of Freedom of Speech** for all parties and not discriminate against the Petitioners succumbing to the pressure or influence of the Anti-Defamation League and/or the Jewish Legal Community who were intent on persecution of the Plaintiff/Appellant/Petitioners for their religious and political beliefs.

Jurisdiction

Whether the **Fourteenth** Amendment to the United States Constitution guaranteeing equal protection under the law including the laws and precedent of the State of Ohio require the Cuyahoga County, Ohio Court of Appeals and the Eighth District Court of Appeals of Ohio and the Supreme Court of Ohio to exercise the standard of law as determined in Ohio on the issue of Summary Judgment equally to Plaintiff, Brahim (Abe) Ayad a Palestinian American Muslim and Michael Troy

Watson a Black American Student of Islam. The Ohio Supreme Court, Eighth District Court of Appeals and Cuyahoga County Court of Common Pleas must use the same **Standard of Jurisdiction** of the Eighth District Court of Appeals when no Final Order was issued or otherwise when the language of "no just reason for delay" pursuant to Rule 54(B) was not included, for all parties and not discriminate against the Petitioners succumbing to the pressure or influence of the Anti-Defamation League and/or the Jewish Legal Community who were intent on persecution of the Plaintiff/Appellant/Petitioners for their religious and political beliefs.

Contract

Whether the **Fourteenth** Amendment to the United States Constitution guaranteeing equal protection under the law including the laws and precedents of the State of Ohio require the Cuyahoga County Court of Common Pleas, the Eighth District Court of Appeals of Ohio and the Supreme Court of Ohio to exercise the Standard of Law as determined in Ohio on the issue of Summary Judgment equally to Plaintiff, Brahim (Abe) Ayad a Palestinian American Muslim and Michael Troy Watson a Black American Student of Islam. The Ohio Supreme Court, Eighth District Court of Appeals and Cuyahoga County Court of

Common Pleas must use the same **Standard of**

Enforcement of Contract Law to all parties and not discriminate against the Petitioners succumbing to the pressure or influence of the Anti-Defamation League and/or the Jewish Legal Community who were intent on persecution of the Plaintiff/Appellant/Petitioners for their religious and political beliefs.

PARTIES TO PROCEEDINGS

The parties Plaintiff, Brahim (Abe) Ayad is a (42) Forty-Two year old Palestinian American Businessman and Political Activist. He is one of the Hosts of "Politically Damned" Talk Radio that began in Cleveland, Ohio on Defendant Radio One Inc. Station WERE 1300 AM on September 5, 2003 as a (1) one hour per week program on Friday evenings. This was a Time Broker (paid) Program. It quickly became a highly rated controversial program as Brahim (Abe) Ayad related his experiences growing up in Israel (Palestine) and the theft of Millions of Dollars of his property that was confiscated by the State of Israel.

Co-Plaintiff, Michael Troy (Mike) Watson had been a practicing Attorney since 1983 in Cleveland, Ohio after he graduated from Cleveland Marshall College of Law, and Harvard Law School (P.I.L.). He began his practice with his License to practice law in the State of Ohio, the Federal Court system, Washington District of Columbia. His background included multiple nominations by the Governor of the State of Ohio for an appointment to a Judicial Position

both the Cleveland Heights Municipal Court and the Cuyahoga County Court of Common Pleas.

After being retained and representing Brahim (Abe) Ayad in the case of *Ayad, et al. vs. ADL, et al.* Judge Timothy McGinty Case No.: 02-464932 Cuyahoga County Court of Common Pleas, he was attacked professionally by the Jewish Legal Community for representing Abe Ayad. To be more specific, it was the Cuyahoga County (Jewish) Bar Association who prosecuted him for a Grievance that had been examined, investigated and totally exonerated by the Cleveland Bar Association!!! This was unheard of as this was something that has ***NEVER HAPPENED BEFORE IN THE HISTORY OF THE SUPREME COURT OF OHIO.*** He was prosecuted by Attorneys Goodman, Fishman, Murnan, Brown and Berger after being accused of Anti-Semitism before the Disciplinary Panel of the Supreme Court of Ohio resulting in his disbarment in (3) Three Panel Hearings, each Panel of which, contained either a Chairman or (2) Two Members of the Jewish Legal Community. Watson was the Co-Host of the Radio Program "Politically Damned" Talk Radio and participated in its growth, ratings and progress from a (1) hour Friday evening program to a daily program proposed for National Syndication and Satellite Broadcast.

Defendant, Radio One, Inc., is the Owner of hundreds of Radio Stations throughout the United States and Internationally and was Licensed by the FCC and offered Time Brokered Radio Programs to the General Public (except Plaintiffs).

Abe Foxman, National Chairman of the Anti-Defamation League entered into this litigation through the Regional Director of the Anti-Defamation League, Attorney Bettysue Feuer and demanded that Defendant, Radio One, Inc. remove the Plaintiffs' program from Broadcast as he claimed it was "the worst Anti-Semitism that he had ever heard". Abe Foxman was not a personally named party and his involvement was discovered less than (30) Thirty days prior to the Trial as the Defendants had deliberately delayed and/or interfered with the normal Discovery Process until approximately (30) Thirty days prior to Trial. The ADL entered an appearance into this litigation on 3-13-06 demanding that Judge Coyne confiscate all Deposition transcripts, Video Tape and Transcript Exhibits of Regional Director of the ADL Bettysue Feuer and have them "destroyed". ***WITHIN DAYS OF THE ADL'S 3-13-06 ENTRY INTO THE LITIGATION ACCUSING THEM OF ANTI-SEMITISM , ON 3-17-06, SUMMARY JUDGMENT WAS GRANTED AGAINST THE PLAINTIFFS OVERRULING THE TRIAL COURT'S OWN PRIOR (2) TWO DECISIONS TO THE CONTRARY!!!!***

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I

The Fourteenth Amendment to the United States Constitution guaranteeing equal protection under the law including the laws and precedent of the State of Ohio require the Cuyahoga County, Ohio Court of Appeals and the Eighth District Court of Appeals of Ohio and the Supreme Court of Ohio to exercise the standard of law as determined in Ohio on the issue of Summary Judgment equally to Plaintiff, Brahim (Abe) Ayad a Palestinian American Muslim and Michael Troy Watson a Black American Student of Islam. The Ohio Supreme Court, Eighth District Court of Appeals and Cuyahoga County Court of Common Pleas must use the same Standard of Summary Judgment for all parties and not discriminate against the Petitioners succumbing to the pressure or influence of the Anti-Defamation League and/or the Jewish Legal Community who were intent on persecution of the Plaintiff/Appellant/Petitioners for their religious and political beliefs.....10

II.

The **Fourteenth** Amendment to the United States Constitution guaranteeing equal protection under the law including the laws and precedent of the State of Ohio require the Cuyahoga County, Ohio Court of Appeals and the Eighth District Court of Appeals of Ohio and the Supreme Court of Ohio to exercise the standard of law as determined in Ohio on the issue of Summary Judgment equally to Plaintiff, Brahim (Abe) Ayad a Palestinian American Muslim and Michael Troy Watson a Black American Student of Islam. The Ohio Supreme Court, Eighth District Court of Appeals and Cuyahoga County Court of Common Pleas must use the same **Standard of Freedom of Speech** for all parties and not discriminate against the Petitioners succumbing to the pressure or influence of the Anti-Defamation League and/or the Jewish Legal Community who were intent on persecution of the Plaintiff/Appellant/Petitioners for their religious and political beliefs.....19

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CASE NO. 04-542565

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> (The Court) **However, I do believe that the issues of whether the Contract at all was breached be it oral or written is a question of fact for a Jury...**
>
> TRO Transcript Hearing P. 34 L. 17-20
>
> Judge William J. Coyne 9/14/04.

COURT OF COMMON PLEAS CUYAHOGA COUNTY DECISION OF JUDGE WILLIAM J. COYNE 11/22/05.....B

"Defendants Motion for Judgment on the Pleadings is granted in part and denied in part. Plaintiff's claim for breach of Contract is the only claim that survives Defendant's Motion for Judgment on the Pleadings...Case may proceed against Radio One, Inc. only and under the Breach of Contract claim only. 11/28/05

3/13/06 Bettysue Feuer Anti-Defamation League (Jewish Influence) makes an appearance in this case in a Motion for Protective Order. ***ADL ACCUSES PLAINTIFFS OF ANTI-SEMETISM IN PLEADINGS TO JUDGE COYNE*****.....**

****3/17/06** Plaintiff's Motion for Summary Judgment denied Defendants Motion for Summary Judgment granted. The Court having considered all the evidence and having construed the evidence most strongly in favor of the non-moving party determine that reasonable minds can come to but one conclusion, that there are no genuine issues of material fact, and the Defendant Radio One is entitled to Judgment as a matter of law.....C**

This case had been scheduled for Trial on 3/27/06 **DECISION OF THE EIGHTH DISTRICT COURT OF APPEALS CASE NO.88031**

MAY 24, 2007.....D

Sustained the decision of Judge Coyne and unlawfully stated that the Defendants' admissions of multiple oral and written Contracts and the written modifications titled "**Broadcast**

Contracts" are "taken out of context" in spite of the legal requirement that all inferences be considered most favorably against the moving party. In obvious collusion and/or influence originating with the ADL and/or the Jewish Legal Community.

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JUDGMENT AFFIRMED CASE NO. 88031

SEE APPENDIX D

1-23-08 SUPREME COURT OF OHIO JURISDICTION DENIED CASE NO 2007-1816

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JURISDICTION

THE DATE UPON WHICH THE HIGHEST COURT IN THE STATE OF OHIO DECIDED MY CASE WASJANUARY 23, 2008 AND A COPY OF THAT DECISION APPEARS AT APPENDIX E THE JURISDICTION OF THIS COURT IS INVOKED UNDER 28 U.S.C. SECT. 1257 (a) AND (b).UNDER THE SUPREME COURT RULE 10 (a) AND (b) IT IS CLEAR THAT THE PLAINTIFFS FIRST AMENDMENT AND FOURTEENTH AMENDMENT RIGHTS HAVE BEEN VIOLATED.

STATEMENT OF THE CASE

ON 9-10-04 THE CASE WAS FILED AND THE T.R.O. REQUEST WAS DENIED ON 9-14-04. IT WAS TRANSFERRED TO THE FEDERAL DOCKET AND RETURNED 8-15-05. THE ADL ENTERED APPEARANCE ON 3-13-06 AND SUMMARY JUDGMENT WAS GRANTED ON 3-17-06. THE JUDGMENT WAS AFFIRMED ON 7-11-07 AND THE OHIO SUPREME COURT DENIED CERT. ON JANUARY 23,2008.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Bill of Rights

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for the redress of grievances.

Free speech can be regulated only as to "time, place and manner." *State v. Miller, 83 N.J. 402, 416 A. 2d 821 (1980); Capitol Movies, Inc. v. City of Passaic, 194 N.J. Super. 298, 476 A. 2d 869* (App. Div. 1984). Regulations meet this requirement only if they survive a three-pronged test, namely, they must: (1) be justified without reference to the content of the regulated speech; (2) serve a significant governmental interest by the least restrictive possible means; and (3) leave open ample alternative channels for the communication of the information. ***Erzonznik v. City of***

***Jacksonville*, 45 L. Ed. 2d 125 (1975); *State v. Miller*, supra.**

("[P]rior restraints on speech and publication are the most serious and the least tolerable infringement on first Amendment rights"); ***Pittsburg Press Co. v. Pittsburg Comm'n on Human Relations*, 413 U.S. 376, 390 (1973).**

There is little need to reiterate that the freedoms of speech and of the press rank among our most cherished liberties. As Mr. Justice Black put it: "**In the First Amendment the Founding Fathers gave the free press the protection it must have to fulfill its essential role in our democracy.**" *New York Times Co. v. United States*, *403 U.S. 713, 717 (1971)* (concurring opinion). The durability of our system of self-government hinges upon the preservation of these freedoms.

"[S]ince informed public opinion is the most potent of all restraints upon misgovernment, the suppression or abridgment of the publicity afforded by a free press cannot be regarded otherwise than with grave concern. . . **A free press stands as one of the great interpreters between the**

government and the people. To allow it to be fettered is to fetter ourselves." Grosjean v. American Press Co., 297 U.S. 233, 50 (1936).

Pittsburg Press Co. v. Human Rel. Comm'n, 413 U.S. 376 (1973)

Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are Citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of Citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The ratification of the ***Fourteenth*** Amendment radically changed the Federal Courts' relationship with State Courts. That Amendment, one of the post-Civil War Reconstruction Amendments ratified in 1868, is the source of this Court's power to decide whether a Defendant in a State proceeding received a fair Trial i.e., whether his

deprivation of liberty was "without due process of law." U.S. Const., Amdt. 14 § 1 ("[N]or shall any State deprive any person of life, liberty, or property, without due process of law"). In construing that Amendment, we have held that it imposes minimum standards of fairness on the States, and requires State Criminal Trials to provide Defendants with protections "implicit in the concept of ordered liberty." *Palko v. Connecticut, 302 U.S. 319, 325 (1937).*

Summary Judgment Standard

When ruling on Motions for Summary Judgment, Rule 56 (C) of the Ohio Rules of Civil Procedure guides the Court. As the Ohio Supreme Court has outlined, Rule 56 (C) permits the Court to grant Summary Judgment when (1) there are no genuine issues of material fact; (2) reasonable minds can come to only one conclusion, and the conclusion adversely affects the non-moving party; and (3) the moving party is entitled to judgment as a matter of law. *Zivich v. Mentor Soccer Club (1998), 82 Ohio St. 3d 367, 369-370.*

JUSTICE ALITO agrees with JUSTICE SCALIA, and would transpose to the pleading stage "the test that is used at the Summary Judgment and Judgment-as-a-matter-of-law stages." Post, at 3 (opinion concurring in Judgment). But the test at each stage is measured against a different backdrop. It is improbable that Congress, without so stating, intended Courts to test pleadings, unaided by Discovery, to determine whether there is "no genuine issue as to any material fact." See Fed. Rule Civ. Proc. 56 (C). And Judgment as a matter of law is a post-trial device, turning on the question whether a party has produced evidence "legally sufficient" to warrant a jury determination in that party's favor. See Rule 50(a) (1).

Tellabs v. Makor Issues & Rights, 06-484 (U.S. 6-21-2007), 127 S. Ct. 2499

REASONS FOR GRANTING PETITION

It is clear that the Trial Court was influenced (threatened) by the actions of the Anti-Defamation League. It may be moderately significant that the Trial Judge Coyne issued notice of his intent to retire shortly after his decision granting Summary Judgment against the Plaintiffs. It is clear that his determinations and those of the Eighth District Court of Appeals are in direct conflict with the State Law determining the basis and procedure for which Summary Judgment may be granted. It is clear that the determinations of the Court below have decided a question of Federal Law that is important to the Supreme Court of the United States as the Ohio State Courts have refused to give the Plaintiffs their FOURTEENTH AMENDMENT rights of Equal Protection under the laws of the State of Ohio and have allowed the Anti-Defamation League to stifle the Plaintiffs First Amendment Rights of Freedom of Speech. These actions of the State of Ohio Courts have so far departed from the accepted and usual course of Judicial Proceedings and the Ohio Supreme Court has Sanctioned this departure from accepted and usual course of Judicial Proceedings, that it cries out for an exercise of the United States Supreme Court Supervisory Power.

Chief Justice Rehnquist identified that "**cases involving unsettled questions of Federal Constitutional Statutory Law of General interests**" should be considered Certiorari worthy. **The Supreme Court: How It Was, How It Is** 269 (1987) *Harlan, Manning LeDikes, 13 Rec. of the N.Y.C. Bar Association 541, 549 (1958).* Obviously, the Cuyahoga County Court of Common Pleas Trial Court Judge William J. Coyne was intimidated by the actions of the Anti-Defamation League including but not limited to their demand that the Deposition of Bettysue Feuer, Regional Director of the ADL be confiscated and destroyed. The influences with regard to this case permeate the absurd determinations by the Eighth District Court of Appeals including Judge Mary J. Boyle (newly Elected Appellate Judge) determinations that the Records and Statements of the Defendants' Employees were "taken out of context" contrary to the Supreme Court of Ohio's determinations as to the restrictions on Summary Judgment. The Supreme Court of Ohio refused to review this matter for reasons known only to them which brings us before this Honorable United States Supreme Court on this Petition for Writ of Certiorari. The Plaintiffs have sustained great harm both financially and professionally and the family of Brahim (Abe) Ayad has been threatened including an attempt to murder one of his children

by Jewish Interests (JDL) which resulted in both FBI and Justice Department Investigations. **"People ask me if I have some kind of death wish, to keep saying the things I do"** writes *Hirsi Ali Author of Infidel (Free Press 368 p.,)* **"The answer is no I would like to keep living".** ***HOWEVER, SOME THINGS MUST BE SAID AND THERE ARE TIMES WHEN SILENCE BECOMES AN ACCOMPLICE TO INJUSTICE."*** It is from these disturbing circumstances of violation of the Plaintiffs' (1st) First Amendment Rights to Free Speech and violation of their (14th) Fourteenth Amendment rights that they respectfully submit their Petition for Writ of Certiorari to the United States Supreme Court.

I

The **Fourteenth** Amendment to the United States Constitution guaranteeing equal protection under the law including the laws and precedent of the State of Ohio require the Cuyahoga County, Ohio Court of Appeals and the Eighth District Court of Appeals of Ohio and the Supreme Court of Ohio to exercise the standard of law as determined in Ohio on the issue of Summary Judgment equally to Plaintiff, Brahim (Abe) Ayad a Palestinian American Muslim and Michael Troy Watson a Black American Student of Islam. The Ohio

Supreme Court, Eighth District Court of Appeals and Cuyahoga County Court of Common Pleas must use the same **Standard of Summary Judgment** for all parties and not discriminate against the Petitioners succumbing to the pressure or influence of the Anti-Defamation League and/or the Jewish Legal Community who were intent on persecution of the Plaintiff/Appellant/Petitioners for their religious and political beliefs.

This case began essentially as a claim resulting from the Defendant's termination of the Plaintiffs' Time Broker Radio Broadcast Program. The Program began as a One (1) Hour per week program and as a result of its immense popularity, it expanded first, to Two (2) Hours (Friday only) per week. It then went to Three (3) Hours a week (Fridays only), and due to its success, then to a daily program Monday through Friday. This Program was in an expansion mode, a "Breakout hit" and as its popularity increased, so did the numbers of hours per week. The Plaintiffs were being assisted by Defendant's Sales Representative, Bill Glover in expanding the Program to a Satellite Broadcast and the Plaintiffs expected to have a Regionally Distributed Program in the immediate future with the expectations of a Nationally Syndicated Program imminent. Plaintiffs had been in touch with other interests and financers seeking

to complete this goal. The Defendant, without notice of any kind, terminated the Plaintiff's Broadcast within hours of the Program on to Broadcast September 6, 2004 (coincidentally the day of a John Kerry for President Rally in Cleveland). The Plaintiffs submit that the Defendants violated their contract for Broadcast of their Program.

1. THE PLAINTIFFS ORIGINAL ONE (1) YEAR TIME BROKER PROGRAM ROLLED OVER TO A FULL ONE YEAR RENEWAL.

The Defendant's Employees and Representatives, David Bevins and Bill Glover acknowledge that the Program was a **FIFTY-TWO (52) WEEK PROGRAM.** Week number on began with the first week of Broadcast September 3, 2003 and ended with the last full week of Broadcast on August 27, 2004. **THE PLAINTIFF'S BROADCAST ONE FULL WEEK ON THE "ROLLED OVER" CONTRACT FROM AUGUST 29, 2004 THROUGH SEPTEMBER 3, 2004!!! (see Exhibit " √ ")**

The WERE 1300 AM Time Broker Contract provided by the Defendants to the Plaintiffs included the following:

"The Station reserves the right to change program times **WITH REASONABLE NOTICE.**

(a) This One (1) Year Agreement may be terminated by either party at **THIRTEEN WEEK INCREMENTS WITH WRITTEN NOTICE SENT BY CERTIFIED OR REGISTERED MAIL FOUR (4) WEEKS PRIOR TO THE END OF A THIRTEEN (13) WEEK PERIOD.**

(b) However, that this agreement may be terminated by Radio One, Inc. at any time and without notice if, in it's opinion or that of it's Counsel this agreement or any portion thereof is, or may be in violation of State or Federal Law with rules, regulations, policy and/or decisions of the FCC, or it's Time Broker's Programming is deemed by Radio One, Inc. to likely place the Stations License in jeopardy at the FCC.

This agreement may not be changed, altered, or **"MODIFIED EXCEPT IN WRITING."**

2. PLAINTIFFS ENTERED INTO A NEW ONE (1) YEAR CONTRACT BEGINNING JANUARY 30, 2004.

Defendant's Employees and Representatives, Bevins and Glover acknowledge that the original contract was cancelled and rewritten on January 30, 2004. This one year contract would have continued through January 2005, and prohibited the Defendant from cancelling the Program on September 6, 2004!!! (see Exhibit "V") When the first modification of the original agreement occurred the Contract was rewritten and assigned a new contract number on or about January 30, 2004. This new contract increased the Broadcast Hours and again provided the Plaintiffs with a Fifty-Two (52) week renewed contract expiring January 30, 2005. All subsequent billing statements identified the REWRITTEN CONTRACT APPROVED BY DAVID BEVINS VICE PRESIDENT OF RADIO ONE, INC., OF JANUARY 30, 2004 BY ITS NEW CONTRACT NUMBER

3. THE ORIGINAL CONTRACT WAS MODIFIED BY THE SEVERAL WRITTEN "BROADCAST CONTRACTS" ALL OF WHICH CONTAIN NOTIFICATION REQUIREMENTS TO TERMINATE.

The Defendant created their own "Broadcast Contracts" acknowledged as a Contract by Defendants Representatives David Bevins, Bill Glover, and their Expert Witness Mike McVay, as a

Contract "modification" of their previous agreement in effect. The last of these **"BROADCAST**

CONTRACTS" called for a term beginning February 2, 2004 for **THIRTEEN (13) WEEK PERIODS ENDING OCTOBER 1, 2004**. Even the Defendant's own documents acknowledged that the established in house records were for the Program to Broadcast to and through October 1, 2004.

The "Broadcast Contract" had been again rewritten for new terms and conditions including expansion of the program in increments of additional hours. The program originally had begun as a Friday (only) program from 10:00 through 11:00 p.m. It expanded initially to Fridays from 10:00 through Midnight. It next expanded by agreement with the Defendant to Friday from 9:00 until Midnight. This expanded further to Monday through Thursday from 11:00 until Midnight and Fridays from 9:00 until Midnight a total of Seven (7) Hours per week. In these Four (4) separate modifications of the original One (1) Hour agreement the Defendants Representative Bill Glover identified that the **"NEW CONTRACT"** was in effect and that the Broadcast of "Politically Damned" Talk Radio would continue as long as there "was payment in advance for the time purchased." He identified that he was never instructed to inform

the Plaintiffs contrary to this agreement that had been the custom and practice between the parties since the onset of the agreement. The Plaintiffs made payment in advance for the future time by leaving the check with the Defendants Employee (Board Operator) on the Friday before the next Two (2) week Broadcast. As the program became a "break out success" it was the expectation of the Plaintiffs that the program would continue through the "roll over" of the original agreement and/or with the modifications, in writing, that had been the oral agreement reduced to written "Broadcast Contracts" between the parties. Throughout this same period the Plaintiffs had received the modifications by written acknowledgement and titled as "Broadcast Contracts." Each of these Broadcast Contracts called for additional notices for cancellation.

As of September 6, 2003, this agreement continued in full force and affect without indication of termination through September 6, 2004. A period of Fifty-Four (54) weeks Broadcast. September 6, 2004 represented the Fifty-Fourth (54th) week of Broadcast of "Politically Damned" Talk Radio. On this date, David Bevins contacted the Plaintiffs approximately Two (2) Hours before the Labor Day Holiday Broadcast and notified them that their program was terminated. There was no

written notice at any time regarding this termination. Plaintiffs were notified that they would be arrested if they appeared on the premises to Broadcast "Politically Damned" Talk Radio. *The CLEVELAND PLAIN DEALER* reported that Abe Foxman, National Chairman of the Anti-Defamation League demanded that the program be cancelled and it was, SUMMARILY AND WITHOUT NOTICE!!!!

4. THE CONTRACT BETWEEN PLAINTIFFS AND DEFENDANTS CALLED FOR A TWO WEEK PREPAYMENT THAT WAS MADE IN FULL BY PLAINTIFFS TO DEFENDANTS.(see Exhibit "V") AT ALL TIMES THE DEFENDANT'S EMPLOYEES AND REPRESENTATIVES BEVINS AND GLOVER ACKNOWLEDGE THAT THE 'CUSTOM AND PRACTICE' OF THE PARTIES WAS FOLLOWED FULLY BY THE DEPOSIT OF A TWO (2) WEEK ADVANCE PAYMENT ON SEPTEMBER 3, 2004 FOR BROADCAST SEPTEMBER 6, 2004 THROUGH SEPTEMBER 17, 2004.

It is acknowledged that payment was made in the amount of Eighteen Hundred Dollars ($1,800.00) for the two (2) week period of September 6, 2004 through September 17, 2004.

The payment "in advance" for the weeks through 9-17-04 in the amount of Eighteen Hundred Dollars ($1,800.00) was paid and accepted in the ordinary manner as was the custom and practice between the parties on September 3, 2004. The exchanges by E-Mail between David Bevins and Sales Manager, Bill Glover verified the acceptance of the check in the amount of Eighteen Hundred Dollars ($1, 800.00) on September 3, 2004 **AND SCHEDULED THE SHOWS THRU OCTOBER 1, 2006**. It was subsequently returned un-cashed on September 9, 2004 by Sales Manager, Bill Glover. This payment was made in the identical manner as all payments throughout the duration of the relationship between Plaintiffs and Defendants.

The Defendant denied successfully, **CONTRARY TO THE STANDARDS OF SUMMARY JUDGMENT LAW,** through the Ohio Courts that any contract was in effect between the parties contrary to all law, rule, and the testimony of Defendants **OWN** Employees and Representatives Bevins, Glover and their Expert, Michael McVay. **It is only the demand of Abe Foxman, National Chairman of the Anti-Defamation League that removed the Plaintiffs and his claims of "The Worst Anti-Semitism that I have ever heard", all of which was untrue.**

II.

The Fourteenth Amendment to the United States Constitution guaranteeing equal protection under the law including the laws and precedent of the State of Ohio require the Cuyahoga County, Ohio Court of Appeals and the Eighth District Court of Appeals of Ohio and the Supreme Court of Ohio to exercise the standard of law as determined in Ohio on the issue of Summary Judgment equally to Plaintiff, Brahim (Abe) Ayad a Palestinian American Muslim and Michael Troy Watson a Black American Student of Islam. The Ohio Supreme Court, Eighth District Court of Appeals and Cuyahoga County Court of Common Pleas must use the same Standard of Freedom of Speech for all parties and not discriminate against the Petitioners succumbing to the pressure or influence of the Anti-Defamation League and/or the Jewish Legal Community who were intent on persecution of the Plaintiff/Appellant/Petitioners for their religious and political beliefs.

> ***Free speech can be regulated only as to "time, place and manner." State v Miller, 83 N.J. 402, 416 A.2d 821 (1980): Capitol Movies, Inc. v City of Passaic, 194N.J. Super.298, 476 A.2d 869 (App. Div. 1984) Regulations meet this requirement only if they survive a three prong test,***

> ***namely, they must: (1) be justified without reference to the content of the regulated speech; (2) serve a significant governmental interest by the least restrictive possible means; and(3) leave open ample alternative channels for the communication of the information. Erzonznik v City of Jacksonville, 422 U.S. 205, 95 S.Ct. 2268 45 L.Ed.2d 125 (1975); State v Miller, supra.***

It was only the demand of Abe Foxman, National Chairman of the Anti-Defamation League that removed the Plaintiffs from their "highly" successful Radio Program with his claims that it was "The Worst Anti-Semitism that I have ever heard", all of which was untrue.

> **We have no doubt that moving pictures, like newspapers and radio are included in the press whose freedom is guaranteed by the First Amendment. *U.S. v Paramount Pictures*, 334 U.S., 1311, 166, 68 S.CT., 915, 933 92 L.Ed. 1260 (1948).**

In this case, it was only the demand of Abe Foxman, National Chairman of the Anti-Defamation League that removed the

Plaintiffs from their broadcast contract with his claims that it was "The Worst Anti-Semitism that I have ever heard" and his demand that "Politically Damned' Talk Radio be removed from the air, that cancelled the broadcast. The Trial Court was intimidated by the power of these Jews. The Eighth District Court of Appeals decision was a mockery of justice and **OVERRULED THE STANDARD OF SUMMARY JUDGMENT IN THE STATE OF OHIO AND AS PLAINTIFF/APPELLANT HAD BEEN PREVIOUSLY AND SUBSEQUENTLY HELD BY THE UNITED STATES SUPREME COURT!!!! The ADL demanded the cancellation and the Ohio Courts censored what was falsely alleged to be "ANTI-SEMITISM'.**

III.

The **Fourteenth** Amendment to the United States Constitution guaranteeing equal protection under the law including the laws and precedent of the State of Ohio require the Cuyahoga County, Ohio Court of Appeals and the Eighth District Court of Appeals of Ohio and the Supreme Court of Ohio to exercise the standard of law as determined in Ohio on the issue of Summary Judgment equally to Plaintiff, Brahim (Abe) Ayad a Palestinian American Muslim and Michael Troy Watson a

Black American Student of Islam. The Ohio Supreme Court, Eighth District Court of Appeals and Cuyahoga County Court of Common Pleas must use the same Standard of Jurisdiction of the Eighth District Court of Appeals when no Final Order was issued or otherwise when the language of "no just reason for delay" pursuant to Rule 54(B) was not included, for all parties and not discriminate against the Petitioners succumbing to the pressure or influence of the Anti-Defamation League and/or the Jewish Legal Community who were intent on persecution of the Plaintiff/Appellant/Petitioners for their religious and political beliefs.

> { ¶ 18 } "Subject-matter jurisdiction is a Court's power over a type of case. It is determined as a matter of law and, once conferred, it remains." *Pratts v. Hurley*, 102 Ohio St. 3d 81, 2004-Ohio-1980, 806 N.E. 2d 992, at ¶ 34; see, also, *Morrison v. Steiner (1972)*, 32 Ohio St. 2d 86, 61 O. O. 2d 335, 290 N.E. 2d 841,paragraph one of the syllabus ("Subject-matter jurisdiction of a Court connotes the power to hear and decide a case upon its merits"). Jurisdiction is a condition precedent to a Court's ability to hear a case. *State ex rel. Tubbs Jones v.*

Suster (1998), 84 Ohio St. 3d 70, 75, 701 N.E. 2d 1002.

"If a Court acts without jurisdiction, then any proclamation by that Court is void." *Id.*, citing *Patton v. Diemer (1988),* 35 Ohio St. 3d 68, 518 N.E. 2d 941. A jurisdictional defect cannot be waived, and it may be raised for the first time on Appeal. *State ex rel. Tubbs Jones* at 75, 701 N.E. 2d 1002; While we note that the State Appealed only Case No. CR-430754 and not Case No. CR-432856, we find that this decision is applicable to both cases because subject matter jurisdiction cannot be waived and may be raised by a reviewing Court Sua Sponte. *State v. Lomax,* 96 Ohio St. 3d 318, **STATE v. HILL, 160 Ohio App. 3d 324 (2005).**

Although Liberty Life did not raise its jurisdictional argument before the Probate Division, it is well settled that a Lack of subject matter jurisdiction may be raised at any time, even for the first time on Appeal. *Jenkins v. Keller (1966),* 6 Ohio St. 2d 122, 126

Furthermore, it is well settled that, where a Court has no jurisdiction over the subject matter of an action, a challenge to

jurisdiction on such ground may effectively be made for the first time on Appeal in a reviewing Court. 3 Ohio Jurisprudence 2d 48, 49, Section 189; *Baltimore & Ohio Rd. Co. v. Hollenberger*, 76 Ohio St. 177, 81 N.E. 184; *Industrial Commission v. Weigand*, 128 Ohio St. 463, 191 N.E. 696.

As an initial matter, it is well established that the defense of lack of subject matter jurisdiction can never be waived. *In re King (1980)*, 62 Ohio St. 2d 87. Objections based upon lack of subject matter jurisdiction may be raised at any stage of the proceedings, *In re Byard (1996)*, 74 Ohio St. 3d 294, 296; may be raised for the first time on Appeal, *Jenkins v. Keller (1966)*, 6 Ohio St. 2d 122, paragraph five of the syllabus; or may be attacked collaterally, *State v. Shrum (1982)*, 7 Ohio App. 3d 244, 245.

The Eighth District Court of Appeals took on this case without jurisdiction as the Trial Court made its 'final' entry without addressing all of the named and served Defendants. This was ignored by the Ohio Courts because of the influences of the ADL as this was an intentional act of censorship of the Plaintiffs at **the demand of Abe Foxman, National Chairman of the Anti-Defamation League . The Trial Court** was intimidated by

the power of these Jews. The Eighth District Court of Appeals decision was a mockery of justice and **OVERRULED THE STANDARD OF JURISDICTION IN THE STATE OF OHIO. The ADL demanded the cancellation and the Ohio Courts censored what was falsely alleged to be "ANTI-SEMITISM'.**

IV

The **Fourteenth** Amendment to the United States Constitution guaranteeing equal protection under the law including the laws and precedents of the State of Ohio require the Cuyahoga County Court of Common Pleas, the Eighth District Court of Appeals of Ohio and the Supreme Court of Ohio to exercise the Standard of Law as determined in Ohio on the issue of Summary Judgment equally to Plaintiff, Brahim (Abe) Ayad a Palestinian American Muslim and Michael Troy Watson a Black American Student of Islam. The Ohio Supreme Court, Eighth District Court of Appeals and Cuyahoga County Court of Common Pleas must use the same **Standard of Enforcement of Contract Law** to all parties and not discriminate against the Petitioners succumbing to the pressure or influence of the Anti-Defamation League and/or the Jewish Legal Community who were intent on persecution of the Plaintiff/Appellant/Petitioners for their religious and political beliefs.

In Ohio, the essential elements of a cause of action for breach of contract are:

1) The existence of an enforceable contract; 2) The performance of the contractual obligations by the party seeking relief; 3) Breach of failure to fulfill contractual obligations by the other party; and 4) Damages suffered by the party seeking relief as a result of the breach .*Energy Marketing Services, Inc. v. Homer Laughlin China Co.,*

186 F.R.D. 369 (S.D. Ohio 1999); Garofalo v. Chicago Title Ins. Co., 104 Ohio App. 3d 95 (Cuyahoga Cty. 1995); *Episcopal Retirement Homes, Inc. v. Ohio Dept. Of Indus. Relations, 61 Ohio St. 3d 366, 369 (1991).*

A contract was in existence and was agreed to by all parties. If he Plaintiffs position was that the original "fifty-two week" contract was in full force and effect, then when it rolled over and became a new one year contract the time would have continued from the end of the fifty-two week period Thursday, August 27, 2004 thru August 26, 2005.

The broadcast of a fifty-third week from August 30th through September 3rd represented a "roll over" of the contract for the period of one additional year. (See attached Exhibit "V")

Further, the separate contract rewritten as a new contract between the parties (Bevins Deposition Transcript Page 220 Lines 19-25, began a rewrite of the old contract designating a new contract number period and cost period. This was further modified by the "Broadcast Contracts" that were issued subsequent to that date, that in all reflected the rewritten contract by hours, terms, and duration.

At the time that the Plaintiffs were terminated from their on-the-air broadcast they had made payment of Eighteen Hundred Dollars ($1,800.00) on September 3, 2004 for their continued... **"NO LESS THAN TWO WEEK"** further duration of broadcast. This payment and Agreement was conducted as had been the 'custom and practice' of the parties.

Regardless of how this matter is reviewed, it would take an extraordinary stretch of the imagination to find that the original "fifty-two week time broker contract" was in full force and effect contrary to all of the written modifications thereof as well as the performance modifications thereof. There can only be one conclusion. The Defendants "version" of the facts is not consistent with the written documentation and sworn testimony.

The Affidavit of David Bevins is substantially contrary to his phone recorded statements as well as his Deposition testimony.

"Oral modification of a written contract must be supported by new and distinct consideration."*Thurston v. Ludwick (1856) 6 Ohio St. 1 Coldwell banker Residential Real Estate*

Services v. Sophista Homes, Ins. (1992)Ohio App. Lexis 5474 .

Clearly an exchange of funds for additional time demonstrates adequate consideration for modifications as indicated herein.

> **"The Appellants conceded that a written contract may be orally amended if the oral amendment has the essential elements of a binding contract.**
>
> ***Richman Builders v. Tome 88 Ohio App. 520, 100 N.E. 2d 433;Rudlidge v. Abeco Financial Services, 1980 Ohio App. Lexis 13610 .***

The modified agreement is not only orally amended but it was supported by the so called "Broadcast Contracts", written documents prepared by the Defendants and submitted to the Plaintiffs. The oral aspect of the agreement therein modified was subsequently reduced to written confirmation

by the Defendants and ratified by both parties in their performance of the terms required therein.

"The reasonable contract for contract performances not measured by hours, days, weeks, months or years, but is to be determined from the surrounding conditions and circumstances which the parties contemplated at the time the contract was executed. *Miller v. Bealer (1992), 80 Ohio App. 3d 180, 182, 608 N.E. 2d 1133 citing Turner Brooks of Ohio, Inc. V. Bowling Green State University (1989), 51 Ohio Misc. 2d 1, 3, 554, N.E.2d 956; Troy Carrocce v. Michael P. Shaffer 1999 Ohio App. Lexis 4845* .

In the Defendant's Brief he argued that no enforcable written contract existed between the parties. We now know that is not true. The Defendants allege that the "oral amendment" must have essential elements of a binding contract. We know that the modifications with adequate consideration met all of the essential elements of a binding contract. The allegations that a oral contract extending beyond one year is barred by the Statute of Frauds is patently inaccurate as the dates of modification are January 30, 2004, May 14, 2004 and September 3, 2004. The time of the termination with regard to this matter is well within the "one year" provision. From the Ohio Revised Code Section 1335.05;

> No action shall be bought whereby to charge the Defendant...Upon an agreement that is not to be performed within one year for the making thereof...Unless the agreement upon which such action is brought or some Memorandum or note thereof, is in writing and signed by the party to be charged therewith...

Defendants in their own construction identify the modification terms and conditions as their **"BROADCAST CONTRACT".** No amount of oral Affidavit or discussion can redefine the terms **"BROADCAST CONTRACT"** to subsequently mean a simple billing statement. At all times the Defendants have **ONLY ALLEGED THAT THE CONTRACT EXPIRED AND WAS NOT RENEWED. EVEN THE DEFENDANTS' EMPLOYEE BEVINS ACKNOWLEDGED THAT MORE THAN ONE CONTRACT EXISTED.** David Bevins on the taped conversation admits that there was more than one contract ***contrary to the representations of his lawyers on behalf of the Defendants;***

> ***(Bevins) Well, what's going on is we had a 52-week agreement that Abe had signed that expired on September 5th, which was yesterday, so that***

Agreement has expired, which we were no longer going to

Renew and continue the show based on that agreement expiring. The other Situation is the other (agreements) –the other programs that were on the air were day-to-day, week-to-week, type of a program which we

Decide that we were no longer going to have aired on our radio station.

So, we decided to take the opportunities, since the contract expired

yesterday, to basically end the relationship between your program and

WERE.

(Watson) I see. Well, actually, I'm a little bit confused, because the original Agreement was modified, it was originally for an hour, and then that modified to turn into every week and even before the contract expired, Abe had paid up for the next two weeks.

(Bevins) Well, the original agreement was a 52 week program that was for Friday.

(Watson) Yeah, but just one hour.

(Bevins) Right. And then, and then, and then other, hours or programming

That was part of that were a day-to-day week-to-week type of situation which we allowed to have happened based on pre-payments and it was in– and even in the agreement it states that we, at the station, can terminate the agreement as we see fit basically at any time.

Phone trans Page 10 Line 3-25, Page 11 Line 1-6.

(Watson) Two Contracts or One Contract?

(Bevins) It is two different sales orders that generated two contracts.

Bevins Trans. Pg. 203 Lines 6-8

(Ayad) And, the extra time we purchased, that these modifications to

the contract, are they written anywhere? Do we have any written notice of them?

(Glover) Well, just I mentioned before, you would receive something in the mail letting you know that you had purchased those.

(Ayad) Would that be the Broadcast Contract?

(Glover) That's what they're labeled as; yes.

Glover Trans. Pg. 545 Lines 20-25 Pg. 546 Line 1-4

(Watson) Q. Okay, Was there any written agreement that sold us the additional time?

(Bevins) A. No.

Q. And there was never any subsequent ratification of any expanded time either, right?

A. No.

Q. Because these additional days were not under any written contract of any kind: is that a fair statement?

A. That's correct.

Bevins Trans. P. 164 L. 12-21.

(Watson) Q. Didn't you say that there's an additional document that identifies the purchase of additional time that's not included in this (original contract)Agreement?

(Bevins) A. This document represents shows that were purchased: yes.

Bevins Trans. P. 172 L. 8-12.

Bevins goes on to explain that the written modification of the original

agreement has a new start time and ending date.

(Watson) Q. Okay, Now, there is a start time on the document that you are referring to; is it not?

(Bevins) A. Yes.

Q. And what date is that?

A. This document has February 6th (2004).

Q. Okay, and there's and end time on that document; when is that? In the top

part right next to February 6th (2004), let's look at that. That's what I am referring to.

A. *ON THE END DATE, IT SAYS "10/1" (2004).*

Bevins Trans. P. 172 L. 14-25 (PARENS ADDED)

(Watson) Q. This document that has a start date of February 6th, 2004 and an end date of October 1st, 2004 is produced by you and your organization; isn't that correct?

(Bevins) A. This sales order is created from our system.

Bevins Trans. P. 173 L. 9-14.

(Watson) Q. This document representing the purchase of the time that was not included in the original agreement has on it a start date and an end reflecting February through October; (2004) is that not correct?

(Bevins) A. That is the dates the document has.

Bevins Trans. P. 176 L. 22-25, P. 177 L. 1.

(Watson) Q. Well, it says here, "cancelled". What were you cancelling, if there wasn't an agreement in effect?

(Bevins) A. Because Bill had put in additional programs.

Q. They had been paid for; hadn't they?

A. They had been paid for; that's correct.....

Q. ....We had an agreement that the shows had to be paid for in advance?

A. That is part of the Time Broker agreement.

Q. All right. Well where does it say that on this document, pay in advance; if it does, it might, just tell me if it says that (**referring to the original 9-3-03 Contract**).

A. I DON'T BELIEVE IT SAYS THAT ON YOUR AGREEMENT..

Bevins Trans. P. 180 L. 18-25 (PARENS ADDED)

Bevins goes on to explain further:

(Bevins) A. The contract that is reflected on your WERE Time Broker Agreement

Started September 3rd, I believe, and it was in the first contract that was entered was an one-week contract. ***THAT ONE CONTRACT HAD BEEN REVISED TEN TIMES OR ACTUALLY, IT WAS MOVING FORWARD AS PART OF THE PREPAYMENT PLAN. So every time you prepaid, we added weeks to the schedule.***

Bevins Trans. P. 207 L. 5-12 (emphasis added)

(Bevins) A. And that first contract that we had started September 3rd and went through the entire length of the agreement, ***BUT BECAUSE IT WAS PREPAID, THAT ORIGINAL CONTRACT WAS MODIFIED EVERY TIME YOU PAID, BUT THERE WAS A DATE OF January 30th that you did not pay us, which we then ended that contract ....which created a new contract number.***

Bevins Trans. P. 208 L. 18-25 (emphasis added)

(Watson) Q. Now, Sir, with regard to these changes that you referred to as modifications, are they identified in the

document entitled "Broadcast Contract" as modified--modifications?

(Bevins) A. It shows in the last ---when the contract was changed.

Bevins Trans. P. 220 L. 19-25

Further, the Defendant's Employees were determined to be within the course and scope of their Employment with the Defendant Radio One, Inc., by this Honorable Court's Order of 11-22-05.

"Plaintiffs' claim for Breach of Contract is the only claim that survives Defendant's Motion for Judgment on the Pleadings. Accepting Plaintiffs' allegations as true, as this Court must for the purpose of ruling on a Motion for Judgment on the Pleadings, he Court finds that Plaintiffs have plead a Cause of Action for Breach of Contract for Breach of an Oral Contract that modified and extended a written agreement between the Parties. The Court finds that Plaintiffs' Breach of Contract claim applies only to Corporate Defendant Radio One, Inc. Plaintiffs' Breach of Contract claim does not apply to any of the Individual

Defendants because, as a matter of law, individual liability should not be extended to Corporate Representatives acting in their Corporate Capacity." Brahim (Abe) Ayad, et al . Vs. Radio One, Inc., et al. Judge Coyne 11-28-2005

In spite of this evidence the Trial Court held (after the intimidation by the ADL) that reasonable minds could only conclude that Defendants were entitled to Summary Judgment in their favor...UNBELIEVABLE!!!

(Watson) Two Contracts or One Contract?

(Bevins) It is two different sales orders that generated two contracts.

Bevins Trans. Pg. 203 Lines 6-8

(Watson) Q. This document that has a start date of February 6th, 2004 and an end date of October 1st, 2004 is produced by you and your organization; isn't that correct?

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Bevins Trans. P. 173 L. 9-14.

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(Bevins) A. Because Bill had put in additional programs.

Q. They had been paid for; hadn't they?

A. They had been paid for; that's correct.....

Q. ....We had an agreement that the shows had to be paid for in advance?

A. That is part of the Time Broker agreement.

Q. All right. Well where does it say that on this document, pay in advance; if it does, it might, just tell me if it says that **(referring to the original 9-3-03 Contract)**.

A. I DON'T BELIEVE IT SAYS THAT ON YOUR AGREEMENT.

Bevins Trans. P. 180 L. 18-25 (PARENS ADDED)

Bevins goes on to explain further:

(Bevins) A. The contract that is reflected on your WERE Time Broker Agreement Started September 3rd, I believe, and it was in the first contract that was entered was an one-week contract. ***THAT ONE CONTRACT HAD BEEN REVISED TEN TIMES OR ACTUALLY, IT WAS MOVING FORWARD AS PART OF THE PREPAYMENT PLAN. So every time you prepaid, we added weeks to the schedule.***

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(Watson) Q. Now, Sir, with regard to these changes that you referred to as modifications,

are they identified in the document entitled "Broadcast Contract" as modified--modifications?

(Bevins) A. It shows in the last ---when the contract was changed.

Bevins Trans. P. 220 L. 19-25

And yet the Defendants' Counsel continued to allege ***only One Contract existed,*** the Court held that 'to the standard required by Summary Judgment law', the Defendants were entitled to Summary Judgment of this issue of whether a contract existed. There was no doubt that the Defendants, Radio One by and through its employees received payment of the Plaintiffs' check for the Broadcast of "Politically Damned" Talk Radio for the two week period beginning September 3rd through September 17th 2004 (see attached Exhibit "___" check No. 2450 issued to and received

by the Defendants on 9-3-04 in the amount of Eighteen Hundred Dollars ($1,800.00). This was acknowledged to have been received by the Defendants' Agents in the usual course and scope of delivery, custom and acceptance.

(Watson) **Q. Okay, Now, at the time---I asked you before about whether or not any program had been cancelled for non-payment and there's been some, correct?**

(Bevins) **A. Yes.**

Q. But that was not the case with "Politically Damned" Talk Radio, was it:

It was not cancelled for non-payment?

A. That's correct.

<u>Bevins Trans. P.69, L.19-25 P.70, L 1-6.</u>

(Watson) **Q. You've indicated that you have contracts with people. They do expire on some occasion. When they expire, what do you do ordinarily?**

(Bevins) **A. Well, it is at our discretion, if we want to renew the agreement or no longer have them on the air.**

Q. I got it. But, you've told us earlier that you never terminated anyone at the end of their contract ever before, EXCEPT "POLITICALLY DAMNED"

TALK RADIO: THAT'S WHAT YOU TOLD US, RIGHT?

A. That is correct.

Bevins Trans. P. 76 L. 14-25

(Bevins) **A. Well, I have not terminated a program or ended a contract other than Politically Damned.**

Bevins Trans. P. 82 L. 23-24

(Hlavaty) **Mr. Ayad had apparently tendered a check for another two week period. The Friday evening, September 3rd, after his show, he gave it to a Board Operator. Your Honor, a Board Operator typically is a young gentleman or woman who works the evening hours, acts merely as a Clerk**

> or Messenger, took the money, turned it into the Station. Once the Station realized it had the check, it ***immediately returned*** it to Mr. Ayad.
>
> ***September 14, 2004 Temporary Restraining Order Hearing Transcript Page 23 Line 7-15.***

At the time that this statement was made in open Court, Counsel well knew that this was the custom and practice of the Parties with regard to payment for the Radio Broadcast. Further, **THE CHECK WAS NOT RETURNED UNTIL SEPTEMBER 9, 2004 AFTER THE PROGRAM HAD BEEN TERMINATED.** It was not immediately returned as was falsely alleged by Counsel. Mr. Hlavaty further falsely presents to this Honorable Court as follows:

(Hlavaty) Your Honor handing you what has been marked as Defendants Exhibit "A" that is a written Contract that was entered into between Radio One and Mr. Ayad back in September of 2003, and you will see, in the very first paragraph it says it begins on September 5, 2003 and runs for a

period of fifty-two weeks. The Contract, expired on or about September 5, 2004, and Radio One simply decided not to re-execute, re-up, or renew the Contract. ***September 14, 2004 Temporary Restraining Order Hearing Transcript Page 21 Line 8-16(see Exhibit" ")***

However, at this time Mr. Hlavaty knew that this Contract was for **FIFTY-TWO (52) WEEKS with the first week being September 1-5, 2003.** The Defendants themselves agree that the fifty-two (52) week period began with the week of September 1- 5, 2003. THERE IS NO DOUBT THAT "POLITICALLY DAMNED' TALK RADIO'S ' (52) FIFTY TWO WEEK ORIGINAL AGREEMENT HAD EXPIRED WITH THE AUGUST 27, 2004 FRIDAY BROADCAST AND THAT THEY HAD BROADCAST A FIFTY THIRD (53rd) WEEK AUGUST 30, 2004 THRU SEPTEMBER 3, 2004 ON NO LESS THAN THE ROLLED-OVER NEXT FIFTY-TWO(52) WEEKS OF CONTRACT!!!

(Ayad) Q. So how does WERE add 52 weeks?

(Bevins) A. We would look at the--I mean, like, for instance, if you had a Saturday

and Sunday show, it would be 52 Saturdays and Sundays; and if you had a Monday thru Friday show, it would be 52 Monday thru Friday Shows.

Bevins Trans. P. 526 L. 17-25

By any calculation, (See Exhibit "___" Calendar 2003-2004), when the first week of broadcast is September 1-5, 2003 ***FIFTY-TWO (52) WEEKS OF BROADCASTS ENDED THE WEEK OF AUGUST 23,-27, 2004 AND EVEN BY THE DEFENDANTS' OWN FLAWED DEFENSE THE ORIGINAL CONTRACT HAD ALREADY ROLLED OVER!!!***

(Watson) Q. I said this contract is in writing, this money exchange, and there's a meeting of the minds for the original one hour per week; isn't that right?

(Bevins) A. Yes.

Q. Everybody agrees it's one hour. Now when it changed to more hours, what I'm asking sir, is did you give any written notice to Abe as to when the additional hours would end, written notice as to when they would end?

A. No.

Q. Okay. So while you assumed on your part, from what you are testifying to that the additional hours would end on September 3rd, is there any way that you communicated and agreed with Abe that those additional hours would end on September 3rd?

A. Yes. I called him on September 6th and explained to him that we were not renewing his agreement.

Q. Okay, so the first time Abe had any notice that his additional hours would end on September 3rd was on September 6th?

A. That's correct.

Bevins Trans. P. 529 L. 14-25 ,530 L.1-11

The Defendants Counsel, however, in open Court falsely stated that the Contract for Broadcast of "Politically Damned" Talk Radio had expired.

(Watson) Q. I got it. So once you heard that on those tapes is when you immediately cancelled us?

(Bevins) A. Once I heard your content of your program and the focus of your program, I decided that we would ***no longer extend your contract and would execute the termination clause in the contract.***

Bevins Trans. P. 145 L. 2-8

(Watson) Q. ...Did you send notice to Politically Damned, Abe or myself, that you intended to terminate the contract?

(Bevins) A .No. We did not terminate the contract, the contract expired, and we took that opportunity to no longer continue our relationship..

Bevins Trans. P. 189 L. 7-16.

(Watson) Q. Well, let me make sure I understand it. Now, Politically Damned didn't know you weren't continuing (the broadcasts) beyond September 3rd. Bill Glover didn't know. Your radio operator didn't know. Nobody knew, except you.

(Bevins) A. And Linda Vilardo.

Bevins Trans. P. 190 L. 19-25 (PARENS ADDED)

It is not difficult to Count the number of weeks beginning with the week of September 1- 5, 2003, which show that the fifty second(52nd) week expired at the conclusion of the week of broadcast August 22nd through August 28th, 2004 (see Exhibit " ___ " Calendar 2003-2004). For that entire weekly Politically Damned broadcast Monday through Friday as a week broadcast.

"Politically Damned" Talk Radio continued a full weeks broadcast from August 29th, 2004 through September 3rd, 2004 Monday through Friday. THIS WAS WEEK NUMBER FIFTY-THREE (53) OF BROADCAST FOR "POLITICALLY DAMNED" TALK RADIO AND WAS NO LESS THAN A ROLL OVER OF A FIFTY –TWO (52) ADDITIONAL WEEK AGREEMENT. THIS WAS REPRESENTED AS BEING IN EFFECT, BY ALL DEPOSED DEFENDANTS' EMPLOYEES, BY THIS CONTINUED BROADCAST. THIS FACT AND THAT THERE WAS A RECEIPT OF FUNDS FOR THAT PERIOD (August 29, 2004 thru September 3, 2004) and two weeks in advance for the period of September 6, 2004 thru September 17, 2004 further supports the Plaintiffs' position.

As both Bevins and Glover acknowledge that there had never been a Time Brokered Contract with Radio One, at any time, that did not roll over automatically in its operation, it is clear that the same circumstances **SHOULD HAVE** applied to the Plaintiffs **ALSO, BUT DID NOT!!!** While the Defendants allege that they "immediately" returned the check received on September 3rd at the conclusion of the **FIFTY-THIRD (53RD) WEEK,** there was no question as to the receipt of payment in full and broadcast through week number fifty-three(53) (see Exhibit "__" with weeks numbered). Further, it is clear that the original Contract beginning September 3, 2003 was reissued as a new Contract with new terms, conditions, payment dates and expiration dates. As of January 2004 it contained a new Contract number and was titled, **"BROADCAST CONTRACT",** a copy of which is attached hereto and incorporated by reference as Exhibit "___". All of these terms and conditions continued to rotate on a thirteen week basis by the position of the Defendants and payment by the Plaintiffs. There is no doubt that these circumstances existed. These statements identify clearly that there was more than one contract in effect between the parties. Further proof that a new contract was rewritten for a 12 month period beginning January 2004 through January of 2005 was attached to the

Affidavit of Brahim (Abe) Ayad. **Section 201(2) of the Restatement of Law 2d, Contracts (1979)**, provides:

> **Where the parties have attached different meanings to a promise or agreement or a term thereof, it is interpreted in accordance with the meaning attached by one of them if at the time the agreement was made a) that party did not know of any different meaning attached by the other, and the other knew the meaning attached by the first party; or(b) that party had no reason to know of any different meaning attached by the other, and the other had reason to know the meaning attached by the first party. LaCONTE ENT. v. CUYAHOGA CTY., 145, App. Ohio216 (2003)**

EVEN THE DEFENDANT BEVINS ACKNOWLEDGES THAT MORE THAN ONE CONTRACT EXISTED. David Bevins on the taped conversation admits that there was more than one contract ***contrary to the representations of his lawyers on behalf of the Defendants;***

> ***(Bevins) Well, what's going on is we had a 52-week agreement that Abe had signed that expired on September 5th,***

which was yesterday, so that Agreement has expired, which we were no longer going to renew and continue the show based on that agreement expiring. The other situation is the other (agreements) –the other programs that were on the air were day-to-day, week-to-week, type of a program which we decide that we were no longer going to have aired on our radio station.

So, we decided to take the opportunities, since the contract expired yesterday, to basically end the relationship between your program and WERE.

(Watson) I see. Well, actually, I'm a little bit confused, because the original

Agreement was modified, it was originally for an hour, and then that

Got modified to turn into every week and even before the contract expired, Abe had paid up for the next two weeks.

(Bevins) Well, the original agreement was a 52 week program that was for Friday.

(Watson) Yeah, but just one hour.

(Bevins) Right. And then, and then, and then other, hours or programming

That was part of that were a day-to-day week-to-week type of situation we allowed to have happened based on pre-payments and it was in– and even in the agreement it states that we, at the station, can terminate the agreement as we see fit basically at any time.

Phone trans Page 10 Line 3-25, Page 11 Line 1-6.

(The Court) However, I do believe that the issues of whether the contract at all was breached, be it oral or written, is a question of fact for a Jury,...

Transcript Page 34 Line 17-20. Judge William J. Coyne 9-14-04

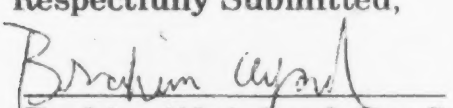
These abhorrent determinations by the Ohio Courts reflect that **it was only the demand of Abe Foxman, National Chairman of the Anti-Defamation League that removed the Plaintiffs from their broadcast contract with his claims that it was "The Worst Anti-Semitism that I have ever heard" and his demand that "Politically Damned' Talk Radio be removed from the air, that cancelled the**

broadcast. The Trial Court was intimidated by the power of these Jews. The Eighth District Court of Appeals decision was a mockery of justice and OVERRULED THE STANDARD OF SUMMARY JUDGMENT IN THE STATE OF OHIO AND AS HAS BEEN PREVIOUSLY AND SUBSEQUENTLY UPHELD BY THE UNITED STATES SUPREME COURT!!!! The ADL demanded the cancellation and the Ohio Courts censored what was falsely alleged to be "ANTI-SEMITISM'.

CONCLUSION

The Petition for Writ of Certiorari must be granted in the interest of justice and to protect the integrity of the Fourteenth and First Amendments.

Respectfully Submitted,



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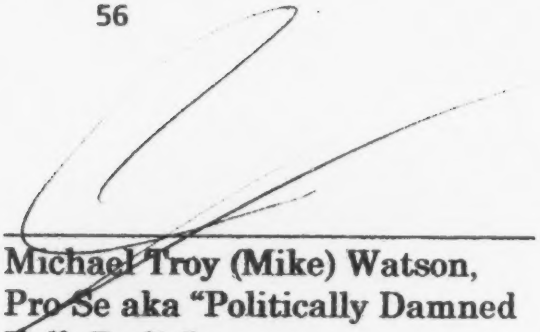

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